IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 16461 of 2006(I)

OS.1671/2002 OF THE 1ST ADDL.MUNSIFF'S COURT, ERNAKULAM

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PETITIONER:

LAILA BEEVI, AGED 59,
W/O. ABDUL JABBAR, KATTISSERI HOUSE,
S.R.M. ROAD, KOCHI-18, THRIKKANARVATTOM DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

BY ADV. SRI.K.C.CHARLES

RESPONDENTS:

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1. **A.C. MOHANAN, AGED ABOUT 50,**
   S/O. SARASWATHY AMMA, HARI VIHAR, DIWANS ROAD,
   KARITHALA DESOM, ERNAKULAM VILLAGE,
   KANAYANNUR TALUK, KOCHI-16.

2. **KISHORE GOPINATH, AGED ABOUT 46,**
   S/O. GOPINATHAN, VADAKKEKUNNAMPILLIL,
   KUNNAMPILLIL LANE, KARITHALA DESOM,
   ERNAKULAM VILLAGE, KANAYANNUR TALUK, KOCHI-16.

3. **SAROJINI AMMA, AGED ABOUT 79,**
   D/O. KUNNAMPILLIL LAKSHMI AMMA,
   KUNNAMPILLIL HOUSE, KUNNAMPILLIL LANE,
   KARITHALA DESOM, ERNAKULAM VILLAGE,
   KANAYANNUR TALUK, KOCHI-16.

4. **THEVAN, AGED ABOUT 84,**
   S/O. CHOTHI, CHAKKKALAPPARAMBIL HOUSE,
   KAKKANAD VILLAGE, KANAYANNUR TALUK.

5. **SANI FRANCIS, AGED 41, S/O. K.C.FRANCIS,**
   KUTTUKUDIYIL HOUSE, R.M.V. ROAD,
   ELAMAKKARA, ERNAKULAM.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C)No. 16461 OF 2006

Dated this the 9th day of August, 2007

J U D G M E N T

The plaintiff in a suit for declaration that two sale deeds, one executed by the third respondent in favour of the 2nd respondent and another executed by the 2nd respondent in favour of the 1st respondent, purporting to be sale deeds in respect of the suit property are not binding on the suit property, is the petitioner in this writ petition under Article 227. The petitioner challenges the order passed by the learned Munsiff in I.A.4395/06 seeking a direction to the District Superintendent of Survey, Ernakulam for executing the warrant given to the Commissioner for measuring the properties. Apart from seeking an order to set aside the order of the learned Munsiff the petitioner seeks a direction to the Munsiff Court to order rendition of assistance of the District Survey Superintendent, Ernakulam to the Commissioner for executing commission warrant as per Ext.P1. The case of the petitioner is that the third respondent had originally 8.69 acres of land in survey No. 249/1 of Thrikkakara South Village and she assigned the entire property to several persons including the plaintiff as per various sale deeds. Thereafter the third respondent executed document No.253/85 in favour of the 2nd respondent purporting to be a sale deed

in respect of a portion of the property (which she had already assigned) and second respondent in turn executed sale deed in favour of the first respondent in respect of the very same property. Allegation is that on the basis of these two documents respondents are threatening to trespass into the suit property. Since documents relied on by the parties appear to be in respect of the plaint schedule the petitioner filed commission application for measurement and demarcation of the suit property and the properties covered by the documents in favour of respondents 2 and 3 with the assistance of Taluk Surveyor. Learned Munsiff allowed the commission application and directed the Taluk Surveyor to render assistance to the Commissioner. Accordingly the Advocate Commissioner and the Taluk Surveyor inspected the property on 15-3-2005. Thereafter the Taluk Surveyor was removed and a private surveyor by name Sreekumar was appointed for identifying the property. Sri.Sreekumar conducted measurement on 28-1-2006, but the measurement could not be completed. Thereafter, the court appointed another private surveyor by name Anil Gopinath for assisting the commissioner. Even though on 3-3-2006, 16-3-2006 and 5-4-2006 the Commissioner and Sri.Anil Gopinath endeavoured to conduct the measurement, the measurement

was not completed and thus the warrant could not be executed. The Advocate Commissioner filed Ext.P2 interim report stating that measurement could not be completed due to the inability of the private surveyor to fix the boundary between the suit property and the puramboku. It was udner such circumstance petitioner filed IA.4395/06 seeking assistance of the District Superintendent of Survey for executing the warrant. It is that I.A. which is dismissed by the impugned order.

2. Service on writ petition could not be completed in spite of several attempts and therefore I directed copy of this writ petition to be served on the advocates who are appearing for the respondents before the trial court. Accordingly copy was served on Advocate Mr. Peeyus A. Kottam who was appearing for 5th respondent before the court below. It was reported that Advocate Saji P.Joseph who was appearing for respondents 1 to 4 refused to accept copy, even though the same was tendered to him. Under the above circumstance it was decided that the correctness of the impugned order will be examined within the parameters which are applicable to the exercise of the supervisory jurisdiction under Article 227 even without service of notice on the party respondent.

3. I have heard the submissions of Sri.K.C.Charles, learned counsel for the petitioner and also those of Sri.Shyson P.Manguzha, learned Governent Pleader for furnishing information as to the officers at various levels in the hierarchy of the survey department. Under impugned order in IA.4395/06 the learned Munsiff has declined the prayer to render the assistance of District Survey Superintendent, Ernakulam to the Commissioner for executing the warrant as per Ext.P1 and has deputed the private surveyor himself to assist the advocate commissioner. According to the learned Munsiff the property has to be identified with reference to the survey records, viz., field measurement book. Therefore the IA. was dismissed directing the plaintiff to get copy of the F.M.Book before proceeding with the measurement of the property. I am of the view that having allowed the commission application and having thus found that a proper measurement and identification of the properties is necessary for resolving the issues in the suit the learned Munsiff was not justified in directing the private surveyor himself to assist the commissioner for carrying out the measurement. From Ext.P2 it is clear that the private surveyor has expressed his inability to identify the suit property. Therefore directing the private surveyor himself to conduct the

measurement was improper. Of course a measurement with the aid of the field measurement book may be able to locate the property properly. But it is a matter of common knowledge that the actual exercise of measurement and identification of disputed boundaries is done by the surveyor who assist the commissioner and not by the commissioner. Under this circumstance setting aside the order passed by the learned Munsiff in IA.4395/06, I allow the I.A. and direct that the commissioner shall be assisted by a competent senior official proficient in survey work. According to the information furnished by Sri.Shyson Manguzha, the learned Government Pleader, the District Superintendent of Survey is the senior official at the District level. Accordingly I direct the learned Munsiff to issue orders to the District Superintendent of Survey, Ernakulam to assist the Commissioner upon the petitioner remitting the requisite charges.

(PIUS C.KURIAKOSE, JUDGE)

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